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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 746, and 772

[Docket No. 141218999-4999-01]

RIN 0694–AG43

Russian Sanctions: Licensing Policy for the Crimea Region of Ukraine

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) issues this final rule to amend the Export Administration Regulations (EAR) to impose additional sanctions that implement U.S. policy toward Russia. Specifically, in this rule BIS amends the EAR by imposing a license requirement for the export and reexport to the Crimea region of Ukraine, and the transfer within

the Crimea region of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99. The rule establishes a presumption of denial for all such exports or reexports to the Crimea region of Ukraine and transfers within the Crimea region of Ukraine, except with respect to items authorized under the Department of the Treasury's Office of Foreign Assets Control (OFAC) General License No. 4, which BIS will review on a case-by-case basis. This action is consistent with the goals and objectives of Executive Order 13685 of December 19, 2014.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-0092, Fax: (202) 482-482-3355, E-mail: rpd2@bis.doc.gov. For emails, include "Russia" in the subject line.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) issues this final rule to amend the Export Administration Regulations (EAR) to impose additional sanctions that implement U.S. policy toward Russia. Specifically, in this rule BIS amends the EAR by imposing a license requirement for the export and reexport to the Crimea region of Ukraine, and the transfer within the Crimea region of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99. For purposes of this final rule, the term "Crimea region of Ukraine" includes the land territory in that region as well as any maritime area over which

sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory. The rule establishes a presumption of denial for all such exports and reexports to the Crimea region of Ukraine or transfers within the Crimea region of Ukraine, except with respect to items authorized under OFAC General License No. 4 which BIS will review on a case-by-case basis.

Licensing Requirements and Policy Consistent With Executive Order [Crimea E.O. 13685]

BIS is imposing licensing requirements with respect to exports and reexports to the Crimea region of Ukraine and transfers within the Crimea region of Ukraine. BIS also is adopting a presumption of denial for the review of license applications for such transactions, with certain exceptions described below, consistent with the prohibitions described in Executive Order 13685 (79 FR 77357), *Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine*, issued by the President on December 19, 2014. This Order took additional steps to address the national emergency declared in Executive Order 13660 of March 6, 2014 (as expanded by Executive Order 13661 of March 16, 2014 and Executive Order 13662 of March 20, 2014), finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine – including the deployment of Russian Federation military forces in the Crimea region of Ukraine – undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Specifically, Executive Order 13685 blocks the property and interests in property of persons determined to meet the blocking criteria and prohibits specified transactions, including

exports, reexports, sales or supply, directly or indirectly, from the United States, or by a United States person, of any goods, services or technology to the Crimea region of Ukraine. Under Section 10 of Executive Order 13685, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

Consistent with the Executive Order's prohibitions, the Department of Commerce imposes a license requirement for exports or reexports to the Crimea region of Ukraine, or transfers within the Crimea region of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99. The rule establishes a presumption of denial for all such exports or reexports to the Crimea region of Ukraine and transfers within the Crimea region of Ukraine, except with respect to items not exempt from the license requirement but authorized under the Department of the Treasury's Office of Foreign Assets Control (OFAC) General License No. 4 (discussed in greater detail in the next paragraph) which BIS will review on a case-by-case basis. This license requirement implements an appropriate measure within the authority of BIS consistent with the provisions of Executive Order 13685. Certain license exceptions are available for exports or reexports to the Crimea region of Ukraine or transfers within the Crimea region of Ukraine.

The Department of Commerce's new license requirement does not apply to exports and reexports to the Crimea region of Ukraine or to transfers within the Crimea region of Ukraine of food and medicine designated as EAR99. On December 19, 2014, in conjunction with the issuance of Executive Order 13685, OFAC issued General License No. 4, Authorizing the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Supplies, and Replacement Parts and on December 30, 2014, it issued General License No. 5, Authorizing Certain Activities Necessary to Wind Down Operations Involving the Crimea Region of

Ukraine. See http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl4.pdf and http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl5.pdf.

This final rule includes a savings clause as described below. If an export, reexport or transfer (in-country) does not qualify for the savings clause described below but falls within the scope of OFAC's General License No. 5, an applicant may note this fact in its BIS license application either under block 24 or in a separate attachment. BIS will consider this fact as part of the license review process.

Revisions to the Export Administration Regulations

To implement the changes described above, this final rule adds a new § 746.6 (Crimea region of Ukraine) to part 746 (Embargoes and Other Special Controls) of the EAR. The new § 746.6 consists of three paragraphs. Paragraph (a) imposes a license requirement for exports and reexports to the Crimea region of Ukraine, and the transfer within the Crimea region of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99. Paragraph (a) also includes a definition of the term 'Crimea region of Ukraine,' which specifies that 'Crimea region of Ukraine' includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory. Paragraph (b) of the new section specifies that the license review policy is a presumption of denial, except for items authorized under OFAC General License No. 4 which will be reviewed on a case-by-case basis. Paragraph (c) includes an

exhaustive listing of the license exceptions that are available to overcome the license requirements in this new section. No license exceptions other than those license exceptions or paragraphs of license exceptions specified in paragraph (c), are available to overcome the license requirements of this new § 746.6.

The license requirements imposed under part 746 of the EAR are independent of the Commerce Control List (CCL)-based license requirements. However, this rule adds a new cross reference to § 746.6 by adding new footnote 8 to the Commerce Country Chart in Supplement No. 1 to part 738. This footnote 8 makes persons aware of the additional part 746 license requirements under § 746.6 that apply for the ‘Crimea region of Ukraine.’ The new footnote also includes the same definition of ‘Crimea region of Ukraine’ that this rule adds to § 746.6. When applying for a license to the Crimea region of Ukraine, applicants should select ‘Crimea region’ in the drop down menu option under the country of Ukraine in the Simplified Network Application Processing System (SNAP-R).

This final rule, as a conforming change to the addition of § 746.6 and the restrictions under paragraph (c), adds ‘Crimea region of Ukraine’ to the general restriction on the use of license exceptions in § 740.2 of the EAR for sanctioned countries by revising the parenthetical phrase “(Cuba, Iran, North Korea, and Syria).” This final rule adds ‘Crimea region of Ukraine’ to this parenthetical phrase because the license requirements under § 746.6 apply to all items subject to the EAR and the only license exceptions available to overcome the license requirement are those specified in § 746.6.

Lastly, this final rule revises the definition of “food” in § 772.1 to include a reference to ‘Crimea region of Ukraine’ along with North Korea and Syria, the two countries that are referenced in the definition.

Foreign Policy Report

The expansion of license requirements for exports, reexports or transfers within the Crimea region of Ukraine in this rule is the imposition of a foreign policy control. Section 6(f) of the Export Administration Act requires that a report be delivered to Congress before imposing such controls. The report was delivered to Congress on January 26, 2015.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export, or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before February 1, 2015. Any such items not actually exported or reexported before midnight, on February 1, 2015, require a license in accordance with this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as

extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number

0694–0088 are not expected to significantly increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to advance U.S. policy toward Russia and therefore promote U.S. national security or foreign policy objectives by immediately preventing items from being exported, reexported, or transferred within the Crimea region of Ukraine. Delay in publication and the rule's effective date to allow for notice and comment would frustrate those objectives. For example, prior to publication of this final rule, items controlled on the Commerce Control List for Chemical & Biological Weapons (CB2 and CB3) reasons that required a BIS license to be exported or reexported to Russia could have been exported to the Crimea region of Ukraine under the no license required (NLR) designation. BIS also imposes end use and end user controls under part 744 and part 746 of the EAR on certain exports and reexports to Russia. A delay in publishing this final rule to obtain public comments would create an incentive for persons to export CB2 and CB3 items to the Crimea region of Ukraine to circumvent license requirements for the export of such items to Russia and for

persons to use the Crimea region of Ukraine to circumvent part 744 and part 746 end use and end user license requirements that apply to Russia. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Parts 738 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 746, and 772 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738 – [AMENDED]

1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. Supplement No. 1 to part 738 is amended by:

- a. Adding footnote designation “8” to “Ukraine”; and
- b. Adding footnote 8.

The addition reads as follows:

Supplement No. 1 to Part 738 – Commerce Country Chart

⁸ See § 746.6 for additional license requirements for all items subject to the EAR, other than food and medicine designated as EAR99, for the Crimea region of Ukraine. The Crimea region of Ukraine includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.

PART 740—[AMENDED]

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. Section 740.2 is amended by revising paragraph (a)(6) to read as follows:

§ 740.2 Restrictions on all license exceptions.

(a) ***

(6) The export or reexport is to a sanctioned destination (Cuba, Iran, North Korea, Syria, and Crimea region of Ukraine) or a license is required based on a limited sanction (Russia) unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular sanctioned country in part 746 of the EAR.

PART 746—[AMENDED]

5. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 7, 2014, 79 FR 26589 (May 9, 2014); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

6. Add § 746.6 to read as follows:

§ 746.6 Crimea region of Ukraine.

(a) *License requirements--(1) General prohibition.* As authorized by Section 6 of the Export Administration Act of 1979, a license is required to export or reexport any item subject to the EAR, other than food and medicine designated as EAR99, to the Crimea region of Ukraine. The ‘Crimea region of Ukraine’ includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory. This license requirement includes transfers within the Crimea region.

(b) *License review policy.* Applications will be reviewed with a presumption of denial, except for items authorized under OFAC Ukraine-Related General License No. 4 which will be reviewed on a case-by-case basis.

(c) *License exceptions.* You may export, reexport or transfer (in-country) without a license if your transaction meets all the applicable terms and conditions of any of the license exception paragraphs specified in this paragraph (c). To determine scope and eligibility requirements, you will need to refer to the sections or specific paragraphs of part 740 (License Exceptions). Read each license exception carefully, as the provisions available for countries subject to sanctions are generally narrow.

- (1) TMP for items for use by the news media as set forth in § 740.9(a)(9) of the EAR.
- (2) GOV for items for personal or official use by personnel and agencies of the U.S. Government, the International Atomic Energy Agency (IAEA), or the European Atomic Energy Community (Euratom) as set forth in § 740.11(a) and (b)(2) of the EAR.
- (3) GFT for gift parcels and humanitarian donations as set forth in § 740.12.
- (4) TSU for operation technology and software for lawfully exported commodities as set forth in § 740.13(a) and sales technology as set forth in § 740.13 (b) of the EAR.
- (5) BAG for exports of items by individuals leaving the United States as personal baggage as set forth in § 740.14(a) through (d) of the EAR.
- (6) AVS for civil aircraft and vessels as set forth in § 740.15(a)(4) and (d) of the EAR.

PART 772 – [AMENDED]

7. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

8. Section 772.1 is amended by revising the definition for the term “Food” to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

Food. Specific to exports and reexports to North Korea, Syria and Crimea region of Ukraine, food means items that are consumed by and provide nutrition to humans and animals, and seeds, with the exception of castor bean seeds, that germinate into items that will be consumed by and provide nutrition to humans and animals. (Food does not include alcoholic beverages.)

Dated: January 23, 2015.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

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